

Nos. 14-7077, 14-7078

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES OF AMERICA, ex rel. BRIAN BURKE,  
and BRIAN BURKE, Relator,

*Appellant/Cross-Appellee,*

v.

RECORD PRESS, INC.,

*Appellee/Cross-Appellant.*

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**APPELLEE RECORD PRESS, INC.'S OPPOSITION TO  
APPELLANT'S MOTION FOR LEAVE  
TO IMMEDIATELY FILE BRIEF OUT OF TIME**

Record Press respectfully submits that Appellant's Motion to Immediately File Brief Out of Time should be denied for the following reasons.<sup>1</sup>

First, Appellant's assertion that he has not previously asked for an extension is incorrect. Appellant filed an out-of-time motion seeking a one-month extension at 5:05 p.m. on December 29, 2014, the day his initial brief was due. ECF 1529459. As set forth in Record Press's opposition, ECF 1529510, that motion is both procedurally and substantively deficient and should be denied. Appellant

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<sup>1</sup> Although Appellant asserts that he hand-served by his motion by courier Record Press's counsel has not yet received a hand-served copy of the motion, which Appellant filed after 10 p.m. on a Friday evening.

should not be able to avoid that result through a subsequent motion for leave filed four days later. Indeed, as Appellant appears to recognize, his motion for leave is essentially just a motion for extension of time. Thus, just like his first motion for extension, this motion is untimely under Circuit Rule 28(e)(2) and fails to comply with the requirements of Circuit Rule 28(e)(3).

Second, as Record Press has already established in its response to Appellant's motion for an extension, ECF 1529510, and in its motion to dismiss Appellant's appeal, ECF 1529987, both of which Record Press incorporates by reference herein, Appellant has shown no extraordinary circumstances that justify his failure to timely file his initial brief and his failure to seek an extension of time until after 5 p.m. on the date his brief was due.

Third, the brief Appellant seeks to have accepted out of time is essentially just a repackaging of the opposition to Record Press's motion for summary affirmance that Appellant filed in July, ECF 1504917, confirming that, contrary to Appellant's motion, his brief is not "complex" and that he had more than sufficient time to meet this Court's December 29th deadline. Other than some reordering, formatting, and other cosmetic changes, the briefs are nearly identical.

For these reasons and the reasons set forth in (1) Appellee Record Press, Inc.'s Opposition To Appellant's Motion For Extension To File Initial Brief And Corresponding Appendix [1529510] and (2) Appellee Record Press, Inc.'s Motion

to Dismiss for Failure to Timely File the Initial Brief [1529987], Record Press respectfully requests that Appellant's motion for leave to file his initial brief out of time be denied.

Respectfully submitted,

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Dated: January 6, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on this January 6, 2014, I served Appellee Record Press, Inc.'s Opposition To Appellant's Motion For Leave To Immediately File Brief Out Of Time on the following counsel for Appellant by filing the document via the Court's CM/ECF system:

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